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OFFICE OF THE SECRETARY

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November 16, 1998

*Cassandra  
de Souza*

Ms. Magalie Roman Salas  
Secretary  
Federal Communication Commission  
1919 M Street, N.W.  
Washington, DC 20554

**ORIGINAL**

Re: Joint Application of AT&T Corp. and  
British Telecommunications plc

Dear Ms. Salas:

Enclosed for filing on behalf of AT&T Corp. ("AT&T") and British Telecommunications plc ("BT"), concurrent with its filing today at the Securities & Exchange Commission, is a copy of the Framework Agreement governing the proposed global communications venture between AT&T and BT that was the subject of various applications filed with the FCC on Tuesday, November 10, 1998. These applications included (1) two FCC applications on FCC Form 312 requesting consent to the assignment of licenses to Violet License Co. L.L.C.; (2) an application of AT&T and its subsidiaries for amendment of certain of its Section 214 authorizations; (3) an application of AT&T and its subsidiaries for consent to the assignment of submarine cable landing licenses to VLT Co. L.L.C.; (4) an application for Section 214 authority of VLT Co. L.L.C.; and (5) an application for Section 214 authority of TNV [Bahamas] Limited. Please associate the Framework Agreement with the docket established for these applications.

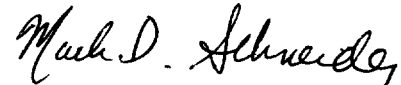
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WASHINGTON, D.C.

Ms. Magalie Roman Salas  
November 16, 1998  
Page 2

Any questions regarding this matter should be directed to Joel Winnick of Hogan & Hartson LLP, representing BT, or the undersigned.

Sincerely,

A handwritten signature in cursive script that reads "Mark D. Schneider".

Mark D. Schneider

Enc.  
cc: Sherille Ismail

**JOINT VENTURE  
BETWEEN  
AT&T CORP.  
AND  
BRITISH TELECOMMUNICATIONS PLC**

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**FRAMEWORK AGREEMENT**

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**VOLUME I**

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**As of October 23, 1998**

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FRAMEWORK AGREEMENT (this "Agreement"), dated as of October 23, 1998, by and among AT&T Corp., a corporation incorporated under the laws of the State of New York, United States of America ("AT&T"), VLT Corporation, a corporation incorporated under the laws of the State of Delaware, United States of America ("VLT"), and together with AT&T, the "AT&T Parties"), British Telecommunications plc, a company organized under the laws of England and Wales ("BT"), BT (Netherlands) Holdings B.V., a *Besloten Vennootschap* organized under the laws of The Netherlands ("BT Holdings"), and together with BT, the "BT Parties"), and Thistle B.V., a *Besloten Vennootschap* organized under the laws of The Netherlands ("Thistle BV").

R E C I T A L S :

A. The parties wish to establish a joint venture to (i) develop and offer Global Communications Services (as defined below), (ii) offer Communications Services (as defined below) to specified customers in the global market, and (iii) collaborate on the other activities specified herein, all as more fully set forth herein and in the Exhibits, Schedules and Annexes hereto and subject to the terms and conditions hereof.

B. The parties agree that the joint venture will be implemented through Thistle BV and separate Subsidiaries (as defined below) of Thistle BV organized or incorporated in the United States (as defined below), England and, if necessary or appropriate, elsewhere (the "Newco Subsidiaries").

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the adequacy and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE 1

### DEFINITIONS; INTERPRETATION

1.1 Definitions. For the purposes of this Agreement, the following terms shall have the following meanings, unless the context requires otherwise:

“Accounting Rates” shall mean the contractual consideration for the termination of the inbound/outbound communications traffic of AT&T or BT and their Subsidiaries through the International Settlement Process (substantially as such regime is in effect as of the date hereof).

“Action” shall mean any action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Body, whether civil, criminal, administrative or regulatory.

“Affiliate” of any Person shall mean a Person that Controls, is Controlled by, or is under common Control with, such Person.

“Affiliate Transaction,” with respect to either parent, shall mean any agreement, arrangement or understanding between such parent or one or more of its Affiliates (other than Thistle BV or one or more of its Controlled Affiliates), on the one hand, and Thistle BV or one or more of its Controlled Affiliates, on the other hand.

**“Agreement Officers”** shall mean the CEO, the CFO, and the most senior executive officer of each of the MNC Unit, the Product Unit and the International Carrier Services Unit.

**“AOPB”** shall mean an annual operating plan and budget contemplated by Section 6.1 for a fifteen month period, comprised of each Fiscal Year and the immediately following fiscal quarter or, in the case of the first AOPB, the period until the end of the fiscal quarter immediately following the first full Fiscal Year.

**“Applicable Law”** shall mean any foreign or domestic law, statute, code, ordinance, rule or regulation promulgated or enacted, or any order, judgment, writ, stipulation, award, injunction or decree entered, by a Governmental Body.

**“Approvals”** shall mean any consent, approval, license, permit or authorization.

**“Asset Contribution Agreement (BT)”** shall mean the share and asset purchase agreement substantially in the form attached hereto as Exhibit A, comprising the arrangements required for the contribution of assets by the BT Sellers to the Newco Group.

**“Asset Contribution Agreement (AT&T)”** shall mean the share and asset contribution agreement substantially in the form attached hereto as Exhibit B.

**“Asset Contribution Agreements”** shall mean the Asset Contribution Agreement (BT) and the Asset Contribution Agreement (AT&T) and **“Asset Contribution Agreement”** shall mean either of them.

**“Assets”** shall mean assets, properties and rights (including goodwill and including stock, securities or interests of legal Persons), wherever located

(including in the possession of vendors or other third parties or elsewhere), whether real, personal or mixed, tangible, intangible or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person.

**“AT&T GCS Business”** shall mean the Global Business Communications Services business and the business of owning and operating Global Network Facilities conducted by the AT&T Sellers in which the AT&T Assets are used or by the Contributed AT&T Subsidiaries, including the business of the Contributed AT&T Subsidiaries.

**“AT&T Seller”** shall mean AT&T and each Subsidiary of AT&T that owns any Assets to be contributed pursuant to the Asset Contribution Agreement (AT&T) or is subject to any Assumed AT&T Liabilities to be assumed pursuant to such Agreement.

**“Bankruptcy”** shall mean:

(a) with respect to a Person other than a U.K. Person: (i) a court having competent jurisdiction in the premises entering a decree or order for (A) relief in respect of such Person in an involuntary case under any applicable Bankruptcy Law, (B) appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Person or for all or substantially all of the property and assets of such Person, or (C) the winding up or liquidation of the affairs of such Person and, in each case, such decree or order remaining unstayed and in effect for a period of 60 consecutive days; (ii) such Person (A) commencing a voluntary case under any applicable Bankruptcy Law, or consenting to the entry of an

order for relief in an involuntary case under any Bankruptcy Law, (B) consenting to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of such Person or for all or substantially all of the property and assets of such Person, or (C) effecting any general assignment for the benefit of creditors; or (iii) such Person becoming or being declared insolvent; and

(b) with respect to a U.K. Person: (i) an administrative receiver or receiver being validly appointed over the whole of or a substantial part of the undertaking, property or assets of such Person; (ii) an administration order being made in respect of such Person; (iii) an order being made or an effective resolution being passed for the winding up of such Person other than as part of a solvent reorganization or amalgamation effected by a scheme of arrangement under sections 425 to 427 of the U.K. Companies Act 1985; (iv) such Person compounding or entering into any reorganization or other special arrangement with a class of its creditors or its creditors generally; or (v) such Person being unable to pay its debts within the meaning of section 123(1)(e) or 123(2) of the U.K. Insolvency Act 1986 but so that, in each case, the words “it is proved to the satisfaction of the Court” are deleted.

**“Bankruptcy Law”** shall mean (a) with respect to a U.S. Person, Title 11, United States Bankruptcy Code of 1978, as amended, (b) with respect to a U.K. Person, the U.K. Insolvency Act 1986 and any statutory instrument, rules or regulations made thereunder, and (c) with respect to Thistle BV or BT Holdings, The Netherlands Faillissementswet, as amended, and, with respect to each Person referred

to in the preceding clauses (a), (b) and (c), and with respect to other Persons, any similar federal, state or other law or regulation relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization or relief of debtors or any amendment to, successor to or change in any such law.

**“Best Efforts”** shall mean that the obligated Person shall make all efforts to accomplish the applicable objective. Such obligation, however, does not require the obligated Person to incur any liabilities or relinquish any assets or rights if the aggregate burden thereof would either have a Material Adverse Effect on such Person and its Subsidiaries taken as a whole or would represent a cost, loss or other liability in an amount exceeding 25% of the fair market value of the Newco Group on a going concern basis. The fact that the objective is not actually accomplished is no indication that the obligated Person did not in fact utilize its Best Efforts in attempting to accomplish the objective.

**“Broadcast Services”** shall mean the non-interactive (except for purposes of control) transmission and related support activities of signals and data comprising:

- (a) images, television (including business television), radio and cinema programming and other audio-visual productions (including entertainment, information, news and sports) for point to multipoint simultaneous distribution; or
- (b) content which is intended to be incorporated ultimately into television (including business television), radio and cinema programming and other audio-visual productions (including entertainment, information, news and sports) (irrespective of whether distribution is point to multipoint or point to point).

**“BT GCS Business”** shall mean the Global Business Communications Services business and the business of owning and operating Global Network Facilities conducted by the BT Sellers in which the BT Assets are used or by the Contributed BT Subsidiaries, including the business of Concert and the other Contributed BT Subsidiaries.

**“BT Seller”** shall mean BT and each Subsidiary of BT that owns any Assets to be contributed pursuant to the Asset Contribution Agreement (BT) or is subject to any Assumed BT Liabilities to be assumed pursuant to such an Agreement.

**“Business Combination”** shall have the meaning defined in paragraph (c) of the definition of “Change of Control.”

**“Business Day”** shall mean any day other than a day (a) on which commercial banks in the City of New York, United States or Amsterdam, The Netherlands are required or authorized by Applicable Law to be closed or (b) which is a public holiday in London, England.

**“Business Units”** shall mean the International Carrier Services Unit, the MNC Unit, the Network and Systems Unit, the Product Unit and the Technology Unit, and a **“Business Unit”** shall mean any of them.

**“Carrier Services”** shall mean the provision of carriage, including hubbing, routing, transit, reorigination and least cost routing on Global Network Facilities primarily between two or more countries to other International Carriers.

**“CEO”** shall mean the chief executive officer of Thistle BV.

**“CFO”** shall mean the chief financial officer of Thistle BV.



**“Change of Control”** with respect to any Person shall mean the occurrence of any of the following:

(a) The acquisition by any Person or group of Persons of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 45% or more of either (i) the then outstanding shares of common stock of the Person or, in the case of BT, voting rights carried by issued shares at a general meeting of the shareholders (the **“Outstanding Company Common Stock”**) or (ii) the combined voting power of the then outstanding voting securities of the Person entitled to vote generally in the election of directors of such Person (the **“Outstanding Company Voting Securities”**); provided, however, that for purposes of this paragraph (a), any acquisition by any Person pursuant to a transaction that complies with clauses (i), (ii) and (iii) of paragraph (c) of this definition shall not be a Change of Control; or

(b) Individuals who, as of the date of this Agreement, constitute the board of directors or other similar governing body of such Person or, with respect to any Person organized or formed after the date hereof, the individuals who constitute the members of such body at its first meeting (the **“Incumbent Board”**) cease for any reason to constitute at least a majority of the board or other similar governing body of such Person; provided, however, that any individual becoming a director, or having similar management supervisory functions (a **“director”**) subsequent to the date of this Agreement or date of such meeting whose election, or nomination for election by such Person’s shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such

individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Incumbent Board of such Person; or

(c) Consummation of a reorganization, amalgamation, merger or consolidation, scheme of arrangement under sections 425 to 427 of the U.K. Companies Act 1985, sale or other disposition of all or substantially all of the assets or shares of such Person or any similar transaction (a “**Business Combination**”), in each case, unless, following such Business Combination, (i) all or substantially all of the Persons who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities of the applicable Person immediately prior to such Business Combination beneficially own, directly or indirectly, 55% or more of, respectively, the then Outstanding Company Common Stock and the then Outstanding Company Voting Securities, as the case may be, of the Person resulting from such Business Combination (including a Person which as a result of such transaction owns the applicable Person or all or substantially all of the applicable Person’s assets either directly or through one or more Subsidiaries) (such resulting Person, a “**Resulting Corporation**”) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities of the applicable Person, as the case may be, (ii) no Person or group of Persons (excluding any Resulting Corporation) beneficially owns, directly or

indirectly, 45% or more of, respectively, the then Outstanding Company Common Stock of the Resulting Corporation or the then Outstanding Company Voting Securities of the Resulting Corporation, and (iii) at least a majority of the members of the board of directors or other similar governing body of the Resulting Corporation were members of the Incumbent Board or were approved by a majority of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the board or other similar governing body, providing for such Business Combination; or

(d) Approval by the shareholders of such Person of a complete liquidation or dissolution of such Person, except with respect to a U.K. Person, pursuant to a scheme of arrangement that does not otherwise constitute a Change of Control pursuant to paragraph (a), (b), (c) or (e) of this definition or an actual complete liquidation or dissolution of such U.K. Person; or

(e) Another Person or group of Persons shall otherwise obtain effective Control of such Person.

**“Charter Documents”** shall mean the Thistle BV Charter Documents, the DirectorCo Charter Documents, the Newco Services Company Charter Documents and the Newco Subsidiary Charter Documents.

**“Check the Box Entity”** shall mean any Person designated as such on Schedule 2.2 and, with respect to Persons not so designated, any such Person that AT&T elects to be treated as a partnership for U.S. federal income tax purposes pursuant to the procedure set forth in Annex 3.

**“Class”** shall mean the class of Class A Representatives, the class of Class B Representatives or the class of the Class C Representative.

**“Class A Representative”** shall mean a member of the DirectorCo Board appointed by AT&T or the Affiliate of AT&T that is a member of DirectorCo.

**“Class B Representative”** shall mean a member of the DirectorCo Board appointed by BT or the Affiliate of BT that is a member of DirectorCo.

**“Class C Representative”** shall mean the then CEO, who shall be a member of the DirectorCo Board.

**“Code”** shall mean the United States Internal Revenue Code of 1986, as amended, and any successor legislation.

**“Communications Services”** shall mean any services and applications, including enhanced services and applications, that involve the transmission of voice, data, sound, music, still and moving image or video and other elements by fixed media (such as wire, cable or fiber), or radio or other wave signal, and any similar or substitute service available or offered from time to time, and the business of developing, designing or offering content-based applications.

**“Concert”** shall mean Concert Communications Company, an unlimited company incorporated in England and Wales.

**“Consolidated Group”** shall mean an affiliated group of corporations (within the meaning of section 1504(a) of the Code) filing a consolidated U.S. federal Income Tax Return, and a group of corporations filing a consolidated, combined or unitary Tax Return for state, local or foreign Tax purposes.

**“Contributed AT&T Contracts”** shall mean the contracts and agreements to which any of the AT&T Sellers or Contributed AT&T Subsidiaries is a party set forth or described in Schedule 15.1A.

**“Contributed AT&T Subsidiaries”** shall mean the Subsidiaries of AT&T set forth in Schedule 15.1A.

**“Contributed BT Contracts”** shall mean the contracts and agreements to which any of the BT Sellers or Contributed BT Subsidiaries is a party set forth or described in Schedule 15.1B.

**“Contributed BT Subsidiaries”** shall mean the Subsidiaries of BT set forth in Schedule 15.1B and shall include BT IntermediateCo, Concert Holdings and their Subsidiaries.

**“Contribution”** shall mean the contribution and transfer by the AT&T Sellers or the BT Sellers, respectively, to the Newco Group of the AT&T Assets and BT Assets, respectively, and the assumption by the Newco Group of the Assumed AT&T Liabilities and Assumed BT Liabilities from the AT&T Sellers or the BT Sellers, respectively, as contemplated by this Agreement and the Asset Contribution Agreements.

**“Control”** shall mean the direct or indirect power affirmatively to direct the management and policies of a Person, whether through the ownership of voting securities, by agreement or otherwise. **“Controls,” “Controlled”** and **“Controlling”** shall have corresponding meanings.

**“Covered Investor”** with respect to any Person shall mean any “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act)

that either, directly or indirectly (a) has effective Control of such Person or (b) has beneficial ownership of 45% or more of either the Outstanding Company Common Stock or Outstanding Company Voting Securities of such Person.

**“CTO”** shall mean the chief technology officer of Thistle BV.

**“Current Subsidiaries”** shall mean the Subsidiaries of Concert Holdings as of the date hereof.

**“Default”** shall mean an occurrence or circumstance that constitutes a violation, breach or default, which gives another Person or Persons the right to accelerate the defaulting Person’s performance of, or the right to cancel or terminate, or which results in the loss of any benefit under or the creation or imposition of any Lien on a Person’s Assets under, an organizational document, or any contract, order or other commitment or obligation, whether following the expiration of any applicable grace period or the giving of any required notice and where there has not been any cure or waiver of, or consent to, such violation, breach or default.

**“DirectorCo”** shall mean a limited liability company to be established by AT&T or one of its Affiliates and BT or one of its Affiliates under the laws of the State of Delaware.

**“DirectorCo Board”** shall mean the management board of DirectorCo.

**“DirectorCo Charter Documents”** shall mean the certificate of formation and the operating agreement of DirectorCo substantially in the form attached hereto as Exhibit E-1 and Exhibit E-2, respectively.

**“Disregarded Entity”** shall mean a Person designated as such on Schedule 2.2 and, with respect to Persons not so designated, any such Person that

elects to be treated as a disregarded entity for U.S. federal income tax purposes pursuant to the procedure set forth in Annex 3.

**"Distribution Agreement (Newco Products)"** shall mean the distribution agreements between Thistle BV and AT&T and between Thistle BV and BT substantially in the form attached hereto as Exhibit F-1 and Exhibit F-2, respectively.

**"Distribution Agreement (Parent Products)"** shall mean the Distribution Agreement (BT Services) and Distribution Agreement (AT&T Services) substantially in the form attached hereto as Exhibit G-1 and Exhibit G-2, respectively.

**"Distribution Agreements"** shall mean the Distribution Agreements (Newco Products) and the Distribution Agreements (Parent Products), and

**"Distribution Agreement"** shall mean any of them.

**"Distributor"** shall mean any Person that engages in the marketing, sale or other distribution of Global Business Communications Services to end user customers and resellers.

**"Dollars"** and the sign "\$" shall mean dollars in the lawful currency of the United States.

**"Domestic Network Facilities"** shall mean all facilities that support bandwidth, transmission, signaling, routing, network service intelligence, network control intelligence, switching and Operational Systems Support (including any related software support) in connection with the transmission of voice, data, sound, music, still and moving image, or video and other elements by fixed media (such as wire, cable or fiber), or radio or other wave signal, other than Global Network Facilities.

**“EBITDA”** shall mean, with respect to any Person for any period, the net income after Taxes of such Person for such period, plus, to the extent deducted from revenues in calculating net income after Taxes for such period, the sum of (i) all interest expense, including the interest component or equivalent under capital leases, (ii) all expense and provision for any current and deferred federal, state or other domestic or foreign Income Taxes, and (iii) depreciation, amortization and other similar non-cash charges, in each case as determined in accordance with the GAAP of the applicable jurisdiction of such Person applied on a consistent basis.

**“Environmental Law”** shall mean any federal, state, local or foreign statute, ordinance, rule, regulation, code, common law (including tort and environmental nuisance law), legal doctrine, order, judgment, decree, injunction, requirement or agreement with any Governmental Body, relating to pollution, human health or safety, or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or to emissions, discharges, releases or threatened releases of any hazardous substances or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any such hazardous substances.

**“Environmental Liabilities”** shall mean Liabilities relating to, arising out of or resulting from any Environmental Law (including all removal, remediation or cleanup costs, investigatory costs, governmental response costs, natural resources damages, property damages, personal injury damages, settlement amounts, costs of compliance with any settlement, judgment or other determination of Liability and indemnity, contribution or similar obligations) and all costs and expenses (including



reasonable fees, charges and disbursements of attorneys, consultants and experts), interest, fines, penalties or other monetary sanctions in connection therewith, whether arising from negligence, strict liability or any other theory of recovery at law or in equity.

**“Environmental Permit”** shall mean any Permit required or issued pursuant to any Environmental Law.

**“European Region”** shall mean all countries listed on Schedule 1.1A hereto.

**“Exchange Act”** shall mean the United States Securities Exchange Act of 1934, as amended.

**“Excluded AT&T Liabilities”** shall mean:

(a) Environmental Liabilities relating to any or all of the AT&T Assets, the Assets of the Contributed AT&T Subsidiaries and the AT&T GCS Business incurred, accrued or resulting from any fact, event or circumstance occurring or existing prior to the Closing Date;

(b) Any Liabilities of the AT&T Sellers relating to Taxes; and

(c) Other Liabilities that arise or result from or relate to the management and operations of the AT&T GCS Business, to the extent related to periods prior to the Closing.

**“Excluded BT Liabilities”** shall mean:

(a) Environmental Liabilities relating to any or all of the BT Assets, the Assets of the Contributed BT Subsidiaries and the BT GCS Business incurred,

accrued or resulting from any fact, event or circumstance occurring or existing prior to the Closing Date;

(b) Any Liabilities of the BT Sellers relating to Taxes; and

(c) Other Liabilities that arise or result from or relate to the management and operations of the BT GCS Business, to the extent related to periods prior to the Closing (other than, in the case of Concert, (i) the Assumed Concert Purchase Debt, less any amount cancelled in accordance with the terms hereof, (ii) the Indebtedness of Concert as contemplated by Section 15.7(a) and (iii) Liabilities of Concert that are reflected in the Concert Financials or that arise or have arisen in the ordinary course of business from April 1, 1998 to the Closing Date, but excluding any material Liabilities associated with material Actions that arise or occur prior to the Closing Date).

**"FCC"** shall mean the Federal Communications Commission of the United States.

**"FCC Order"** shall mean either:

(a) A written order or other determination from the staff of the FCC (either in the first instance or upon review, reconsideration or other action subsequent to an order or other determination of the staff) either approving the consummation of the transactions contemplated by this Agreement and the other Transaction Agreements or stating that no such approval is required (or, in the case of such review, reconsideration or other subsequent action, a written order or other determination to the effect set forth above or affirming or upholding, or having the effect of affirming or upholding, whether by dismissing or denying a petition for

reconsideration or terminating the consideration thereof or otherwise, a previous order or determination to the effect set forth in this paragraph (a)), which order or determination shall no longer be subject to further administrative review by the FCC; or

(b) A written order or other determination from the FCC itself (either in the first instance or upon review, a reconsideration pursuant to section 1.106(a)(i) of the FCC's rules, or other action subsequent to an order or other determination of the staff of the FCC) either approving the consummation of the transactions contemplated by this Agreement and the other Transaction Agreements or stating that no such approval is required (or, in the case of such review, reconsideration or other action subsequent to an order or determination of the staff of the FCC, a written order or other determination from the FCC itself to the effect set forth above or affirming, upholding or having the effect of affirming or upholding, whether by dismissing or denying a petition for reconsideration or application for review or terminating the consideration thereof or otherwise, an order or other determination of the staff of the FCC to the effect set forth in paragraph (a)).

For purposes of this definition, an order or other determination of the staff shall be deemed no longer subject to further administrative review by the FCC:

(x) If no petition for reconsideration or application for review by the FCC of the order or determination of the staff has been filed within 30 days after the date of public notice of the order or determination, as such 30-day period is computed and as such date is defined in sections 1.104 and 1.4, as applicable, of the FCC's rules,

and the FCC has not initiated review of the order or determination of the staff on its own motion within 40 days after the date of public notice of the order or determination, as such 40-day period is computed and as such date is defined in sections 1.117 and 1.4 of the FCC's rules, or

(y) If any such petition for reconsideration or application for review has been filed, or, if the FCC has initiated review of the order or determination of the staff on its own motion, the FCC itself has issued a written order or other determination or taken other action to the effect set forth in paragraph (b) above.

**"Five Year Business Plan"** shall mean a five year business plan contemplated by Section 6.1.

**"GAAP"** shall mean generally accepted accounting principles.

**"global,"** when used with respect to Communications Services, shall mean Communications Services between or among two or more countries.

**"Global Business Communications Services"** shall mean Global Communications Services provided or targeted to businesses and to their employees in their capacity as employees.

**"Global Communications Services"** shall mean current or future global end-to-end managed and all other global Communications Services of a type intended for use by end user customers and resellers, but excluding Satellite & Radio Services, basic switched voice and basic telex.

**“Global Network Facilities”** shall mean all facilities that support bandwidth, transmission, signaling, routing, network service intelligence, network control intelligence, switching and Operational Systems Support (including any related software support) in connection with the transmission of voice, data, sound, music, still and moving image, or video and other elements by fixed media (such as wire, cable or fiber), or radio or other wave signal, exclusively or predominantly between or among two or more countries (it being understood that facilities that are predominantly designed to support such transmission between or among two or more countries may also support, as a non-predominant use, transmission within one or more of such countries). Global Network Facilities shall not include backhaul facilities, except AT&T's U.S.-based international SDH backhaul facilities. Except as expressly agreed by the parties, Global Network Facilities shall not include any system or systems that provide Communications Services exclusively within a given country (in each case, whether or not a Home Country).

**“Governmental Approval”** shall mean any consent, approval, authorization, waiver, grant, concession, license, permit, exemption or order of, registration, certificate, declaration or filing with, or report or written notice to, any Governmental Body and any expiration or termination of any waiting period requirement (including pursuant to the HSR Act) of any Governmental Body.

**“Governmental Body”** shall mean any court or any national, federal, state, municipal, or local government or any political subdivision, governmental department, commission, board, bureau, agency, official or instrumentality of any thereof, domestic or foreign, and shall include the European Commission.

**“group”** or **“Group”** shall mean two or more persons within the meaning of Section 13(d)(3) of the Exchange Act.

**“Hazardous Substances”** shall mean any pollutants, contaminants, toxic or hazardous or extremely hazardous substances, materials, wastes, constituents, compounds, chemicals (including petroleum or any by-products or fractions thereof, any form of natural gas, lead, asbestos and asbestos-containing materials, polychlorinated biphenyls (**“PCBs”**) and PCB-containing equipment, radon and other radioactive elements, ionizing radiation, electromagnetic field radiation and other non-ionizing radiation, infectious, carcinogenic, mutagenic, or etiologic agents, pesticides, defoliants, explosives, flammables, corrosives and urea formaldehyde foam insulation) that are regulated by any applicable Environmental Laws.

**“Home Country”** when used with respect to BT shall mean the U.K., and its Crown dependencies, trusts, territories and possessions listed on Schedule 1.1B, and when used with respect to AT&T shall mean the United States, and its trusts, territories and possessions listed on Schedule 1.1C.

**“Home Territory”** when used with respect to BT shall mean the European Region and BT’s Home Country, and when used with respect to AT&T shall mean the NAFTA Region and AT&T’s Home Country.

**“HSR Act”** shall mean the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

**“Income Tax”** shall mean any federal, state, local or foreign Tax (a) based upon, measured by, or calculated with respect to net income or profits (including capital gains Taxes, alternative minimum Taxes and Taxes on items of Tax

preference), or (b) based upon, measured by, or calculated with respect to multiple bases (including corporate franchise Taxes), if one or more of the principal bases on which such Tax may be based, measured by, or calculated with respect to is described in clause (a).

**"Indebtedness"** shall mean, as applied to any Person, without duplication (a) all indebtedness for borrowed money, whether obtained from third parties or Affiliates of such Person, (b) that portion of obligations with respect to any lease of any property by that Person as a lessee that, in conformity with the GAAP applicable in the jurisdiction of such Person, is accounted for as a capital lease on the balance sheet of such Person and that is properly classified as a liability on a balance sheet in conformity with such GAAP, (c) all guarantees of indebtedness of third Persons, (d) all indebtedness of third Persons secured by Liens on any of the Assets of such Person, (e) all letters of credit or similar instruments, and (f) the deferred and unpaid purchase price of property, other than trade payables arising in the ordinary course of business.

**"Influence Test"** shall be deemed to be met with respect to a Person (the **"Investor"**) investing in a party (the **"Investee"**), other than by way of commercial or other *bona fide* lending arrangements, if any one of the following tests is satisfied:

(a) The Investor has, as a practical matter, effective negative veto rights in fact on major business decisions taken by the board of directors or other similar governing body or management of the Investee or on major strategic

transactions of the Investee, whether by contract or by agreement with the Investee or any of its Affiliates (but excluding any such rights that arise by statute); or

(b) The Investor has achieved material influence on the policies, direction or operation of the Investee; or

(c) The Investor has the right or power to nominate, or has designees representing, more than 25% of the members of the board of directors or other similar governing body of the Investee; provided that if 25% of such members or other similar governing body is not a whole number, 25% of such members shall be deemed to be the next higher whole number; or

(d) The Investor (together with its Affiliates and any Persons with whom it is acting in concert) has acquired in one transaction or a series of transactions beneficial ownership of at least 20% of the Outstanding Company Common Stock or the Outstanding Company Voting Securities of the Investee from the Investee; provided, however, that if the relevant securities are issued by the Investee in exchange for assets (other than cash) or a business of a third party, and the Influence Test shall not otherwise be met, the Influence Test shall be deemed to have been met with a limitation (a "Limitation") for purposes of Article 13; or

(e) The Investor has the right, by contract, to veto significant decisions affecting the Investee.

**"Intellectual Property Rights"** or **"IPR"** shall have the meaning set forth in the IPR Agreement.

**"International Carrier"** shall mean a Person which (a) is licensed or authorized, or is otherwise permitted to provide, or operates where no license or



authorization is required, crossborder Communications Services to the public, or  
 (b) owns or operates, or is licensed to own or operate, the underlying facilities used to provide crossborder Communications Services to the public.

**“International Carrier Services”** shall mean Carrier Services and International Traffic Termination Services.

**“International Carrier Services Unit”** shall mean the Business Unit contemplated by Section 2.1(b).

**“International Settlement Process”** shall mean the system of accounting and settlement rates for the exchange of international traffic of a type referred to in Section 64.1001 of the regulations of the FCC and any subsequent regime for arranging and managing inbound/outbound traffic termination terms and conditions with an International Carrier.

**“International Traffic Service Agreement (AT&T)”** shall mean the Newco International Traffic Service Agreement substantially in the form attached hereto as Exhibit D-2.

**“International Traffic Service Agreement (BT)”** shall mean the Newco International Traffic Service Agreement substantially in the form attached hereto as Exhibit D-1.

**“International Traffic Service Agreements”** shall mean the International Traffic Service Agreement (AT&T) and the International Traffic Service Agreement (BT), and **“International Traffic Service Agreement”** shall mean either of them.

**“International Traffic Termination Services”** shall mean the arrangement, management and delivery of inbound/outbound traffic termination of all the communications traffic, including voice and Internet Protocol traffic, of AT&T or BT and their Subsidiaries, including through the International Settlement Process and least cost routing alternatives, but excluding all Global Business Communications Services.

**“Internet Protocol”** or **“IP”** shall mean internet protocol.

**“IPR Agreement”** shall mean the IPR Agreement substantially in the form attached hereto as Exhibit H.

**“Level 1 Customers”** shall mean MNCs that are limited buyers of Global Communications Services that primarily buy Global Communications Services on a local basis, and which are not Qualifying MNC Customers.

**“Level 2 Customers”** shall mean MNCs that are significant buyers of Global Communications Services but which do not buy Communications Services in a fully integrated global manner, and which are not Qualifying MNC Customers.

**“Liability”** or **“Liabilities”** shall mean any and all losses, claims, charges, debts, actions, causes of action, suits, damages, obligations, payments, costs and expenses, indemnities and similar obligations, and other liabilities, including all contractual obligations, whether absolute or contingent, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, and including those arising under any law, rule, regulation, Action, threatened, contemplated or completed Action (including the costs and expenses of demands, awards, assessments, judgments, fines, penalties, settlements and

compromises relating thereto, court costs, fees, charges and disbursements of attorneys, and any and all costs and expenses, whatsoever reasonably incurred in investigating, preparing or defending against any such Actions or threatened or contemplated Actions), order or consent decree of any Governmental Body or any award of any arbitrator or mediator of any kind, and those arising under any contract, commitment or undertaking, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person.

**"Liberty Media Group"** shall mean Liberty Media/Ventures Corporation, any of its direct or indirect current or future Subsidiaries, any Person in which it has or acquires any direct or indirect equity investment and any other Person directly or indirectly Controlled by any of the foregoing.

**"LIBOR"** shall mean the arithmetic average rounded up to the nearest 1/16th of 1% of the London interbank offered rates of major banks for Dollar deposits for a three-month period that are displayed on page "LIBO" on the Reuters Monitor Money Rate Service or such other page as may replace the "LIBO" page and displays London interbank offered rates for Dollar deposits, in each case, as relevant, determined on a particular date or from time to time.

**"Lien"** shall mean any lien, pledge, mortgage, security interest, claim, lease, charge, option, right of first refusal, easement, servitude, right-of-way, encroachment or other encumbrance affecting title, limited right (*beperkt recht*), transfer, voting or other similar restriction under any agreement or any similar lien or encumbrance.

**“Local Purchase Agreements”** shall have the meaning set forth in Section 1.2 of the Asset Contribution Agreement (AT&T).

**“Major Competitor”** of AT&T or BT shall mean (a) when used with reference to AT&T, any Person that, together with all of its Affiliates, has revenues derived in AT&T’s Home Territory from the provision of Communications Services that constitute at least 10% of the aggregate revenues of AT&T derived from the provision of Communications Services in such Home Territory; and (b) when used with reference to BT, any Person that, together with all of its Affiliates, has revenues derived in BT’s Home Territory from the provision of Communications Services that constitute at least 10% of the aggregate revenues of BT derived from the provision of Communications Services in such Home Territory, in each case determined by reference to the most recently completed full fiscal year of any Person with respect to which the measurement is being made.

**“Managed Network Services”** shall mean the provision of service to a customer consisting of the management of the logical and physical elements of a customer’s end-to-end communications network, including network transport and equipment, and incremental, directly related network systems and applications planning, design, integration and migration, and customer support functions.

**“Managed Network Services Facilities”** shall mean all facilities, systems and software that are used predominantly in the provision of Managed Network Services.

**“Management Board”** shall mean the management board of Thistle BV.

**“Material Adverse Effect”** shall mean, with respect to a Person, any change, circumstance or effect that, individually or in the aggregate with all other changes, circumstances and effects, is or is reasonably likely to be materially adverse to the business, operations, assets, liabilities (including contingent liabilities), financial condition or results of operations of such Person and its Subsidiaries taken as a whole. For the avoidance of doubt, any regulatory proceedings or class of proceedings currently in process shall not be deemed to have or contribute to a Material Adverse Effect as to the scope of proposals currently contemplated by such proceedings or class of proceedings.

**“MCI”** shall mean MCI Communications Corporation, a corporation formerly incorporated under the laws of the State of Delaware, and a constituent company which was merged with and into MCI-WorldCom.

**“MCI-WorldCom”** shall mean MCI WorldCom, Inc., a corporation incorporated under the laws of the State of Delaware.

**“MNC Newco Subsidiaries”** shall mean the Newco Subsidiaries and any other members of the Newco Group to the extent that any of the foregoing engages in the business and activities of the MNC Unit.

**“MNCs”** shall mean any Person that (a) has annual revenues in excess of \$1 billion, (b) has annual international revenues in excess of \$200 million, (c) has operations on two or more continents and in four or more countries, (d) is not a Governmental Body, (e) is not a carrier or a Person purchasing Communications Services primarily for the purpose of resale to others, and (f) buys Global Communications Services.

**"MNC Unit"** shall mean the Business Unit contemplated by Section 2.1(c).

**"Multimedia Content"** shall mean only the creation and organization of content relating to any combination of text, voice, graphic, audio, video or similar communication media distributed by means of, or capable of being distributed by means of, Communication Services. For the avoidance of doubt, it does not include the distribution, including transmission and ancillary caching, or management of the distribution of such material by means of Communication Services.

**"NAFTA Region"** shall mean Mexico and Canada.

**"Netco"** or **"Netcos"** shall mean the Newco Subsidiaries identified on Schedule 2.2, and **"Netco 1"** shall mean the Newco Subsidiary identified as such on Schedule 2.2.

**"Network and Systems Unit"** shall mean the business unit contemplated by Section 2.1(d).

**"Newco Group"** shall mean Thistle BV, the Newco Subsidiaries and the Newco Services Company.

**"Newco Services Company"** shall mean the Delaware limited liability company to be established and owned equally by AT&T or one of its Affiliates and BT or one of its Affiliates, which will, for compensation on an arm's length basis, manage certain of the operations of the Newco Group in or from the United States.

**"Newco Services Company Charter Documents"** shall mean the certificate of formation and the limited liability company agreement substantially in the form attached hereto as Exhibit J-1 and Exhibit J-2, respectively.

**“Newco Subsidiary Charter Documents”** shall mean constitutive or equivalent documents of material Newco Subsidiaries, including certificates of formation and limited liability company agreements in the case of a material Newco Subsidiary that is a limited liability company organized under the laws of the State of Delaware, and memorandum and articles of association in the case of a material Newco Subsidiary that is a U.K. Person.

**“Non-Concert Product Contributions”** shall mean (a) with respect to the AT&T GCS Business, wholesale revenue in respect of GSDN, International 0800, VNS, International Private Line, Frame Relay, ATM, Managed Network Services and IP, and (b) with respect to the BT GCS Business, wholesale revenue in respect of International 0800, International Featurenet, International Private Leased Circuits, Correspondent ATM, IPSS (X.75) and VSAT.

**“Non-Exclusive Content Services”** shall mean the business of developing, designing or offering content-based applications, excluding Special Content Services.

**“Operational Support Systems”** shall mean the computer systems on which a Person depends for providing management support of all of its operations, including service delivery and provision, network usage and control, billing of customers, network planning, fraud identification, resource planning and facility management.

**“Outsourcing Professional Services”** shall mean the provision of professional services relating to network architecture validation, implementation, operations and life cycle management, including business process consulting,

migration planning and implementation, but excluding Managed Network Services, and may include the ownership and acquisition of assets from and on behalf of customers related to the provision of Outsourcing Professional Services.

**“Outsourcing Services”** shall mean Outsourcing Professional Services and Managed Network Services.

**“parent”** shall mean either AT&T or BT and **“parents”** shall mean AT&T and BT, and in either case any successor corporations thereto and, pursuant to any future reorganizations, any holding companies owning, directly or indirectly, substantially all of the issued and outstanding Voting Securities thereof.

**“party”** shall mean any of AT&T, VLT, BT, BT Holdings or Thistle BV, and **“parties”** shall mean AT&T, VLT, BT, BT Holdings and Thistle BV.

**“Performance Test Shortfall”** shall have the meaning set forth in Schedule 1.1D.

**“Performance Test Shortfall for the ICS Unit”** shall have the meaning set forth in Schedule 1.1E.

**“Permits”** shall mean any permit, license, registration, franchise, authorization or approval issued by any Governmental Body.

**“Permitted Liens”** shall mean statutory liens for Taxes and other charges or costs not yet due and payable and Liens imposed in the ordinary course of business, in each case which do not materially adversely affect the full use, occupancy, operation or enjoyment of the Asset subject thereto.



**“Person”** shall mean any individual, general or limited partnership, association, joint stock company, limited liability company, joint venture, corporation, trust, unincorporated organization, Governmental Body or other legal person.

**“Pre-Closing Taxes”** shall mean (a) any and all Taxes for or attributable to any taxable period ending (or deemed to end) on or prior to the Closing Date (a **“Pre-Closing Period”**), limited, with respect to Concert Holdings and its Current Subsidiaries, to an amount in excess of the amount of the Concert Deductible, that are due and payable by Thistle BV or any of the Newco Subsidiaries in respect of, in the case of Section 25.5(b), the BT Assets, the BT GCS Business or the Contributed BT Subsidiaries (the **“BT Pre-Closing Taxes”**), and in the case of Section 25.5(a), the AT&T Assets, the AT&T GCS Business or the Contributed AT&T Subsidiaries (the **“AT&T Pre-Closing Taxes”**); and (b) any and all Taxes of a Consolidated Group or similar group of companies, including a value added tax group or subgroup of which any Contributed BT Subsidiary or Contributed AT&T Subsidiary, respectively, was a member prior to the Closing Date for which such entity is liable by reason of Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign law (such Pre-Closing Taxes described in this clause (b) referred to herein as **“BT Consolidated Group Taxes”** and **“AT&T Consolidated Group Taxes,”** as applicable). Taxes arising in the ordinary course of business of Concert Holdings and the Subsidiaries of Concert, for the period ending on the Closing, to the extent originally reflected on filed Returns, shall be BT Pre-Closing Taxes to the extent paid after the Closing and shall constitute the Concert Deductible to the extent unpaid at the Closing. The **“Concert Deductible”** shall

mean the sum of (x) the amount of the Tax reserve set forth on the Concert Financials, and (y) the amount set forth in the preceding sentence. For the avoidance of doubt, any audit adjustments with respect to such Taxes shall be BT Pre-Closing Taxes. In the case of any Taxes that are payable with respect to a period that begins before the Closing Date and ends after the Closing Date (a "Straddle Period"), the portion of such Tax that shall be deemed to be payable for the portion of the period ending on the Closing Date shall be deemed equal to the amount which would be payable if the taxable year ended on the close of business on the Closing Date; provided, that, in the case of an entity that owns an interest in an entity that is treated as a partnership for U.S. federal income tax purposes, the determination shall be made as if the partnership's taxable year ended on the Closing Date; and provided, further, that in the case of any Taxes other than Income Taxes for which such an interim closing of the books method is not practicable, such as in the case of property Taxes, the portion of such Tax that shall be deemed to be payable for the portion of the period ending on the Closing Date shall be deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), whether actually paid before, during, or after such period, multiplied by a fraction the numerator of which is the number of calendar days in the period ending on (and including) the Closing Date and the denominator of which is the number of calendar days in the entire period. Any credits for Taxes in the proviso of the preceding sentence shall be prorated based upon the fraction employed in such proviso. Such proviso shall be applied with respect to Taxes for a Straddle Period relating to capital

(including net worth or long-term debt) or intangibles by reference to the level of such items at the close of business on the day before Closing Date.

**“Product Unit”** shall mean the Business Unit contemplated by Section 2.1(a).

**“Qualifying MNC Customers”** shall mean any MNC that is primarily engaged in a Selected Industry Sector and that meets the objective criteria set forth in Schedule 1.1F, subject to the exceptions set forth therein, and, except as provided in Section 7.8, shall include such Person’s Subsidiaries.

**“Reasonable Best Efforts”** shall mean that the obligated Person shall make diligent, reasonable and good faith efforts to accomplish the applicable objective. Such obligation, however, does not require the incurrence of any liabilities, or the relinquishment of any assets or rights, on the part of the obligated Person that in the aggregate are material when measured by reference to the benefits anticipated to be obtained from the Newco Group by the Person or otherwise by reference to the applicable objective, as the context may require. The fact that the objective is not actually accomplished is no indication that the obligated Person did not in fact utilize its Reasonable Best Efforts in attempting to accomplish the objective.

**“Representative”** shall mean any Class A Representative or Class B Representative or the Class C Representative.

**“Rest of World”** and **“RoW”** shall mean those countries and territories not in either Home Territory.

**“Return”** or **“Tax Return”** shall mean any report or return, including any supporting schedules that constitute a part of such report or return, required to be supplied to any Governmental Body with respect to Taxes including, where required or actually filed, a return of a Consolidated Group.

**“Satellite & Radio Services”** shall mean Communications Services (other than VSAT services) delivered through:

(a) satellites using existing and future satellite constellations and associated ground networks and equipment through (i) services, in the case of BT, provided by Eutelsat, Intelsat and Inmarsat and any successors thereto and, in the case of AT&T, provided by Comsat and Panamsat and any successors thereto, and (ii) any other satellite business; provided, that, in the case of clause (ii), the aggregate annual revenues derived by any parent and its Group Companies providing such services shall not exceed the higher of \$250 million or 5% of the aggregate annual revenues of the Newco Group for the most recently completed Fiscal Year; and

(b) terrestrial radio solutions targeted at maritime and aeronautical applications using existing and future long, medium and short-range radio systems.

**“Selected Industry Sectors”** shall mean (a) the financial services, information and electronics technologies sectors, (b) subject to the satisfaction of the objective criteria specified in Schedule 1.1F, the petroleum sector, and (c) in the case of customers headquartered in the RoW or the European Region, subject to the satisfaction of the objective criteria specified in Schedule 1.1F, and in accordance with the timetables and priorities set forth in such Schedule 1.1F, the other nine industry sectors listed in Schedule 1.1F.

**“Special Content Services”** shall mean data aggregation and communications data-based applications, and other communications data applications, such as directory assistance or the generation of routing or billing information, that are designed to facilitate or enable the effective use of Communications Services and that are provided in connection with the provision of Communications Services by the provider of such Communications Services or by an Affiliate thereof.

**“Subsidiary”** of any Person shall mean any corporation or other organization whether incorporated or unincorporated of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or other similar governing body of such corporation or other organization is directly or indirectly owned or Controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries. Notwithstanding anything in this Agreement to the contrary, no Person that is not Controlled by another Person shall be deemed to be a Subsidiary of such other Person.

**“Supply Agreement (Parent Components)”** shall mean (a) the Non Regulated Services Agreement between Thistle BV and BT, (b) the agreement for the Supply of Regulated Services between BT and Thistle BV, (c) the Services Agreement between Thistle BV and AT&T and (d) the AT&T Master Carrier Agreement, substantially in the form attached hereto as Exhibit K-1, Exhibit K-2, Exhibit K-3 and Exhibit K-4, respectively.

**“Systems Integration”** shall mean advising clients on how best to use information technology to achieve their ends, to reengineer business processes to

make organizations work more effectively, specifying, designing or building or specifying, designing and building integrated business systems for or on behalf of clients, managing the change to such systems for or on behalf of clients, supporting, maintaining, enhancing, operating or further developing such systems for or on behalf of clients, providing program or project management and integration of customer defined individual customer solutions and providing other related services required or requested by clients in connection with any of the foregoing. Systems Integration does not include (a) the underlying capability to provide Communications Services or (b) Outsourcing Services.

**“Tax”** and **“Taxes”** shall mean (a) any and all United States, United Kingdom, or other federal, state, local or foreign income, gross receipts, net worth, license, payroll, employment, excise, severance, stamp, occupation, premium, customs duties, capital stock, franchise, profits, gains, withholding (including with respect to any Person, any Tax of another Person, required to be withheld from a payment by such first Person for which such first Person therefore becomes liable), social security (or similar), unemployment, disability, real property, personal property, intangibles, sales, use, transfer, registration, value added, ad valorem, alternative or add-on minimum, estimated or other tax or governmental charge in the nature of a tax of any kind whatsoever, from time to time imposed by or required to be paid to the United States, the United Kingdom, or another country or any state or local or other political subdivision of any thereof, or to any other Governmental Body (**“Taxing Authority”**) (including interest, penalties and additions to tax thereon, penalties for failure to file a return or report, and interest on any of the foregoing)

and (b) any amounts payable under any tax sharing, indemnification or similar agreements with respect to any Taxes described in clause (a) above.

**“Taxing Authority”** shall have the meaning set forth in the definition of **“Tax”** or **“Taxes.”**

**“TCGA”** shall mean the U.K. Taxation of Chargeable Gains Act 1992, as amended, and any successor legislation.

**“TCI”** shall mean Tele-Communications, Inc., a corporation organized under the laws of the State of Delaware.

**“Technology Unit”** shall mean the Business Unit contemplated by Section 2.1(e).

**“Third Party Approval”** shall mean the Approval of any Person other than a Governmental Body, a party or any of its Affiliates.

**“Thistle BV Charter Documents”** shall mean the constitutive documents of Thistle BV substantially in the form attached hereto as **Exhibit I**.

**“Transaction Agreements”** shall mean (a) this Agreement, (b) the Thistle BV Charter Documents, (c) the DirectorCo Charter Documents, (d) the Newco Services Company Charter Documents, (e) the Newco Subsidiary Charter Documents, (f) the Asset Contribution Agreements, (g) the IPR Agreement, (h) **Exhibit P**, (i) the International Traffic Service Agreements, (j) the Distribution Agreements (Newco Products), (k) the Distribution Agreements (Parent Products), (l) the Supply Agreements (Parent Components), (m) the Investment Fund Agreement, and (n) the Employee Matters Agreement.

**“Transaction Gains Taxes”** shall mean Income Taxes and transfer Taxes (including stamp duty, value added, Netherlands capital duty and sales Taxes) imposed on the parents, their Affiliates, Thistle BV or the Newco Subsidiaries, resulting from: (a) the transfer by the BT Sellers of any or all of the BT Assets or Contributed BT Subsidiaries (the **“BT Transaction Gains Taxes”**); or (b) the transfer by the AT&T Sellers of any or all of the AT&T Assets or Contributed AT&T Subsidiaries (the **“AT&T Transaction Gains Taxes”**), in each case, directly or indirectly, to Thistle BV or any Newco Subsidiaries or arising out of or relating to the transactions contemplated by this Agreement (including Schedule 2.2) or by any other Transaction Agreement or agreement contemplated hereby or thereby; Transaction Gains Taxes that would not have been incurred but for transfers of assets to Netco 1 shall constitute **“Excluded Taxes”** except to the extent that the parents agree otherwise pursuant to Schedule 2.2. Without prejudice to the generality of the foregoing, if the provisions of section 179 of the TCGA apply to any company as a result of it ceasing to be a member of the BT U.K. group of companies, or any AT&T U.K. group of companies, any corporation Tax arising on the application of that section shall be a BT Transaction Gains Tax or an AT&T Transaction Gains Tax, respectively.

**“U.K.”** or **“United Kingdom”** shall mean the United Kingdom of Great Britain and Northern Ireland.

**“U.K. Person”** shall mean a Person established, organized or incorporated under the laws of England and Wales.

**“United States”** or **“U.S.”** shall mean the United States of America.



**“U.S. Person”** shall mean a Person established, organized or incorporated under the laws of the United States or any political subdivision thereof.

**“Venture Business”** shall mean, subject to Section 3.3(c), the businesses to be conducted by the Business Units of Thistle BV through the Newco Subsidiaries as described in Section 2.1. For the avoidance of doubt, but subject to Section 2.1(f), the definition of **“Venture Business”** does not include the origination and termination of Communications Services that begin and end in the same Home Country even if a portion of the transmission thereof includes a second country.

**“VSAT”** shall mean very small aperture transmitters.

**“WorldCom”** shall mean WorldCom Inc. a corporation organized under the laws of the State of Georgia.

1.2 **Additional Definitions.** The following terms shall have the meanings defined in the Section indicated:

<b><u>Defined Term</u></b>	<b><u>Section Reference</u></b>
Accountants' Statement	Section 15.2
Accounting Principles	Section 15.2(a)
Acquisition Cost	Section 19.1(b)
Acquisition Proposal	Section 14.2(b)
Acquisition Transaction	Section 19.1(a)
Advantaged Party	Section 20.3(c)
Affected Party	Section 23.6(a)
Agreement	Preamble
Applicable Notice	Annex 2
Appraiser	Annex 2
Asserted Liability	Section 25.6(a)
Assumed AT&T Liabilities	Section 15.1(b)(i)
Assumed BT Liabilities	Section 15.1(b)(ii)
Assumed Concert Purchase Debt	Section 15.5(b)
Assumed Liabilities	Section 15.1(b)(ii)
AT&T	Preamble
AT&T Assets	Section 15.3(a)(i)

<u>Defined Term</u>	<u>Section Reference</u>
AT&T GCS Business Financials	Section 17.1(h)
AT&T GCS Business MAE	Section 17.1(e)(ii)
AT&T Guarantees	Section 15.3(d)
AT&T Indemnified Parties	Section 25.3
AT&T Initial Valuation	Section 15.2(a)
AT&T Leases	Section 17.1(j)(i)
AT&T Minimum Contribution	Section 15.4(a)
AT&T Parties	Preamble
AT&T Property Assets	Section 17.1(j)(i)
AT&T Specified Contracts	Section 17.1(n)(i)
Bankrupt Parent	Section 27.1(a)
Breach Notice	Section 23.5(b)
breaching party	Section 23.4(a)
BT	Preamble
BT Assets	Section 15.3(a)(ii)
BT GCS Business Financials	Section 17.2(h)
BT GCS Business MAE	Section 17.2(e)(ii)
BT Guarantees	Section 15.3(e)
BT Holdings	Preamble
BT Indemnified Parties	Section 25.2
BT Initial Valuation	Section 15.2(a)
BT Leases	Section 17.2(j)(i)
BT Minimum Contribution	Section 15.4(a)
BT Parties	Preamble
BT Property Assets	Section 17.2(j)(i)
BT Specified Contracts	Section 17.2(n)(i)
Burdensome Condition	Section 18.4(a)
Business Unit Information	Section 6.7(a)(i)
Call	Section 23.4(a)
Call Shares	Section 23.4(a)
Cap	Section 15.5(b)
Capital Call	Section 16.2(a)
Capital Call Date	Section 16.3
Capital Call Notice	Section 16.3
Claim	Section 24.3(a)
Claims Notice	Section 25.6(a)
Closing	Section 20.1(a)
Closing Date	Section 20.1(a)
College of Wise Counselors	Section 24.1(a)
complying party	Section 23.4(a)
Concert Financials	Section 17.2(h)(ii)
Concert Holdings	Section 15.5(a)
Confidentiality Agreements	Section 18.10(a)

<u>Defined Term</u>	<u>Section Reference</u>
Consumer Price Index	Section 11.16
ConsumerCo	Section 1.7
Contracts	Annex 1
Covered Investor Breach	Section 22.3(f)
Covered Transaction	Section 23.6(a)
deadlock	Section 6.3(a)
Defaulting Shareholder	Section 16.4(a)
Designated Accountants	Section 15.4(b)
Disadvantaged Party	Section 20.3(c)
Distribution of Netco	Section 13.2(b)
District Court	Section 24.3(a)
Effective Date	Section 23.6(a)
Election Notice	Section 23.4(a)
Employee Matters Agreement	Section 18.8(c)
engaging party	Section 19.3(b)
EU Merger Regulations	Section 18.3
Event of Default	Section 22.3
fair market value	Annex 2
Farland	Section 11.18(a)
Farland Equity Stake	Section 11.18(b)
Fiduciary Duty Standard	Section 11.2(b)
Fiscal Year	Section 6.5
Funding Breach	Section 16.4(a)
GBCS Alliance	Section 11.5(a)
Group Companies	Section 11.1
Indemnifying Party	Section 25.6(a)
Indemnatee	Section 25.6(a)
Indemnity Payment	Section 25.8(c)
Independent Auditor	Section 6.8
Initial Contributed Assets	Section 15.1(a)
Initial Valuations	Section 15.2(a)
Investment Fund Agreement	Section 18.8(a)
Key Employee	Annex 1
Key Governmental Approvals	Section 18.4(a)
Leverage Ratio	Section 6.4(a)
Losses	Section 25.2
Management Board Valuation	Section 15.2
Master Outsourcing Agreement	Section 7.3(d)
Material Acquisition Transaction	Section 19.3(a)
MCI-WorldCom Distribution Agreement	Section 9.2(b)
Minimum Contribution	Section 15.4(a)
New Assets	Section 19.1(a)
Newco Subsidiaries	Recital B

<u>Defined Term</u>	<u>Section Reference</u>
Non-Bankrupt Parent	Section 27.1(a)
Non-Competition Undertakings	Section 11.2(a)
Non-Defaulting Shareholder	Section 16.4(a)
non-engaging party	Section 19.3(b)
Non-Indemnifying Party	Section 25.5(e)
non-subject party	Section 23.3(b)
Other Parent	Section 13.2(a)
Other Party	Annex 2
Peering Arrangements	Section 2.1(g)
Performance Notice	Section 23.2(a)
Post-Closing Tax Benefit	Section 25.5(a)
preferred supplier	Section 10.1(b)
Preferred Supplier	Section 10.1(b)
Pro Rata Basis	Section 11.4(b)
Proposing Party	Annex 2
Provisional AOPB	Section 6.3(a)
Purchased Shares	Section 15.5(b)
Purchaser	Section 10.1(b)
Put	Section 23.3(b)
Put Notice	Section 23.3(b)
Put Shares	Section 23.3(b)
Qualified Holding Company	Section 5.5
Recipient	Section 18.10(b)
Reduction	Section 20.3(b)
Retail Price Index	Section 11.16
Revenue Limitation	Section 11.4(b)
RTP Acts	Section 28.1(b)
Special Efforts	Section 11.2(a)
Specified Entity	Section 11.2(a)
Specified Person	Section 11.2(a)
subject party	Section 23.3(b)
target parent	Section 14.2(a)
Tax Distribution	Schedule 6.9
Tax Indemnifying Party	Section 25.5(e)
Tax Proceeding	Section 25.5(e)
Term Sheet	Section 17.1(r)(vi)
Third Party Supplier	Section 10.1(b)
Thistle BV	Preamble
Transfer	Section 12.1(a)
Transition Period	Section 23.2(b)
Transition Plan	Section 18.8(e)
Triggering Person	Section 13.1
Triggering Transaction	Section 13.1

<u>Defined Term</u>	<u>Section Reference</u>
Venture Business Material Adverse Effect	Section 17.1(a)
VLТ	Preamble
Voting Securities	Section 14.1(a)
WIP	Section 15.4(a)
Wise Counselor	Section 24.1(a)

1.3 General Principles of Construction. Unless otherwise specified, references herein to Articles, Sections, Exhibits, Schedules and Annexes refer to the Articles, Sections, Exhibits, Schedules and Annexes to this Agreement. The words “hereof,” “herein” and “hereunder,” and words of like import, refer to this Agreement as a whole and not to any particular Article or Section of this Agreement. References to this Agreement herein shall, unless the context otherwise requires, include the Exhibits, Schedules and Annexes hereto. The words “without limitation” shall be deemed to follow any use of the word “include” or “including” herein. References to amounts preceded by the “\$” sign shall refer to Dollars but shall also be deemed to include the equivalent in other currencies (it being agreed that, where the context requires, the actual currency of transactions will be mutually agreed by the parties thereto). The parties acknowledge that the Schedules to this Agreement (i) are not admissions as to the validity of any claim by any third Person and (ii) are not intended to constitute and shall not be construed as indicating that such matter is required to be disclosed, nor shall such disclosure be construed as an admission that such information is material or that it would have a Material Adverse Effect. Disclosure of the information contained in one section or part of a parent’s Schedules shall be deemed as proper disclosure for all sections or parts of such parent’s

Schedules to the extent its relevance to another section or part is clearly apparent from the face of such Schedule.

1.4 Variations in Pronouns. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require.

1.5 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

1.6 Liberty Media Group.

(a) For the avoidance of doubt, notwithstanding anything in this Agreement or the other Transaction Agreements to the contrary, (i) no member of the Liberty Media Group shall be deemed to be Controlled by (or an Affiliate, Subsidiary or Group Company of) AT&T, any of its Covered Investors or any of their Affiliates or Subsidiaries, (ii) no determination that is to be made with reference to AT&T, any of its Affiliates, Subsidiaries, Covered Investors or Group Companies shall include any member of the Liberty Media Group, and (iii) none of AT&T or any of its Affiliates or Liberty Media Group or any of its Affiliates shall be required to propose, negotiate, commit to or effect, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of, or any limitation or restriction with respect to, any property, business, assets, licenses, franchises or other rights of any member of the Liberty Media Group.

(b) If AT&T shall amend, modify, restrict, limit or waive any provisions of Section 7.18 of, or Schedule 7.18 to, the Agreement and Plan of Restructuring and Merger dated as of June 23, 1998 among AT&T, Italy Merger Corp. and TCI (or the corresponding provisions thereof in any successor

documentation) and the effect of any such amendment, modification, restriction, limitation or waiver would, in BT's judgment, significantly delay or preclude the receipt of the Key Governmental Approvals required for the consummation of the transactions contemplated by the Transaction Agreements, then, on the expiration of the 18-month period provided in Section 20.2(a), if the Key Governmental Approvals shall not have been obtained for the transactions contemplated by the Transaction Agreements, BT shall have the right to decide, by giving notice in writing to AT&T on or before the nineteenth month anniversary of the date of this Agreement, whether or not it wishes to require both the AT&T Parties and the BT Parties to continue to be bound by the terms of this Agreement and the other Transaction Agreements for a period specified by it of up to an additional 12 months after the expiration of the 18-month period provided in Section 20.2(a) or to terminate this Agreement and the other Transaction Agreements. If BT shall not have exercised its right to terminate the Transaction Agreements prior to the end of the 30-month period following the date hereof, and if the Key Governmental Approvals have still not been obtained by the end of such 30-month period and such failure was in some meaningful part caused by any such amendment, modification, restriction, limitation or waiver, unless either of the BT Parties is in material breach of their obligations under this Agreement or any other Transaction Agreement, following the termination of the Transaction Agreements at the end of such 30-month period, AT&T shall make a payment to BT in accordance with the provisions of Section 19.3(f), which Section shall apply *mutatis mutandis* to the circumstances described in this Section 1.6(b).

1.7 Consumer Company. In connection with the reorganization of AT&T's business, the company or business unit of AT&T to be established to own, manage, and operate its consumer businesses ("ConsumerCo") shall be deemed a part of AT&T for all purposes of this Agreement and the other Transaction Agreements so long as such businesses remain a division of AT&T or constitute one or more of its Subsidiaries.

## ARTICLE 2

### THE JOINT VENTURE

2.1 Venture Business. In furtherance of the purposes of the Venture Business, the Newco Group will undertake the following activities, each of which will initially be run as a separate Business Unit, through one or more Newco Subsidiaries:

(a) **Product Unit**. This Business Unit will be functionally responsible for defining, marketing and managing Global Business Communications Services. It will conduct product management for the Global Business Communications Services of the Newco Group, providing international product development requirements and controlling the delivery of products, appointing and managing Distributors (subject to the provisions hereof) and managing relationships with its suppliers. As used herein, marketing and managing Global Business Communications Services shall mean product marketing and managing and shall not preclude sales packaging or customer specific offers and sales made by AT&T or BT or their Group Companies to customers other than Qualifying MNC Customers, provided that such offers and sales comply with Section 9.2.



(b) **International Carrier Services Unit.** This Business Unit will provide to AT&T and BT and, subject to the terms and conditions hereof, their Subsidiaries all of their requirements for International Traffic Termination Services, will provide Carrier Services for third parties and may provide Peering Arrangements as contemplated by Section 2.1(g) for the parents and their Affiliates. This Business Unit will be functionally responsible for all relationships with International Carriers in their capacity as carriers and will plan, manage, market, bill, provide channel and customer care support for International Carrier Services. Exhibit P sets forth the principles for the operation of the International Carrier Services Unit.

(c) **MNC Unit.** This Business Unit will (i) market, sell, contract, deliver, manage, maintain and bill Communications Services provided or targeted to Qualifying MNC Customers, and (ii) provide "Tier 1 Customer Care" referred to in Schedule 2.1(c) and billing to Qualifying MNC Customers.

(d) **Network and Systems Unit.** This Business Unit will own and operate the Newco Group's Global Network Facilities. It will be responsible for conducting all international network activities, including asset planning, procurement and implementation and will design, build, lease, operate and manage high quality Global Network Facilities that support Global Communications Services, hubbing, transit, reoriginating, global consumer traffic and other crossborder Communications Services. It will manage on behalf of the Newco Group order entry, provisioning, repair and maintenance, network management, Operational Systems Support and billing systems. It will design, plan, build or lease, manage, transition and integrate network and systems platforms into one network for both the Product Unit and the

International Carrier Services Unit, although the overall design and development of architecture will be the responsibility of the Technology Unit.

(e) **Technology Unit.** This Business Unit will be responsible for defining the interfaces and platforms for the Newco Group's Global Network Facilities and managing development projects for the delivery of new Global Communications Services. This Business Unit will also be responsible for developing interface requirements to permit seamless delivery of services and features across the networks of the Newco Group, AT&T and BT and their Subsidiaries, and, to the extent possible, other Distributors. This Business Unit will recommend technology architecture to each parent, but neither parent nor any of its Subsidiaries shall be required to accept or adopt such recommendations.

(f) **Scope of Venture Business.** Nothing in this Agreement shall preclude (i) customers from requesting or making use of products or services obtained from the Newco Group in such manner as they shall determine, or (ii) sales by the Newco Group of Communications Services to Qualifying MNC Customers.

(g) **Other Activities.** Without imposing any legally binding obligation on the parties and without limiting Section 26.1, the parents intend to investigate and evaluate opportunities for the sale by the Newco Group of global wireless and other services to the international traveler. **"Peering Arrangements"** means interconnection with third party providers of IP backbone facilities. For the avoidance of doubt, the Newco Group shall be able to enter into peering arrangements in any country, provided, that, the peering arrangement is to carry IP traffic that is inter-country and that does not originate and terminate within the same country. This

does not limit the rights of the parents to enter into peering arrangements as they deem necessary, consistent with Article 11. AT&T and BT each believes that a potential prospective benefit of the Newco Group is to enhance the competitiveness of their respective IP activities and to improve their peering relationships. In order fully to take advantage of such potential, the parties agree to study the advantages of permitting the Newco Group to engage in peering arrangements on behalf of AT&T and BT as well as any adverse or divergent impacts that these arrangements may have on the parents and to propose to the parents how best to deal with peering arrangements by March 31, 1999.

## 2.2 Structure.

(a) The parties contemplate that the activities of the various Business Units will be conducted through the Newco Subsidiaries identified in Schedule 2.2. Schedule 2.2 specifies in reasonable detail information with respect to the structure of the Newco Group to be in effect on the Closing Date, including, with respect to each existing or presently contemplated Newco Subsidiary, (i) its organizational form, (ii) its jurisdiction of organization or incorporation, (iii) its capitalization, including the nature and classes of shares or ownership interests, (iv) its direct and indirect ownership by the parties, and (v) which activities of the various Business Units will initially be conducted by such Newco Subsidiary.

(b) The parties shall, and shall cause their Subsidiaries and Thistle BV to, establish, to the extent necessary, the Newco Subsidiaries identified on Schedule 2.2, and such other Subsidiaries, with such structure and tax characteristics as the parties may agree between the date of this Agreement and the Closing Date, so

that the structure and tax characteristics as contemplated by such Schedule will be in effect on or as soon as practicable following the Closing Date.

2.3 Principal Place of Business. The parties intend that the corporate headquarters for the Newco Group will be on the East Coast of the United States.

2.4 IPR Matters. The ownership, licensing and other matters concerning relevant IPR of the parents and IPR of the Newco Group shall be handled in accordance with the IPR Agreement, which shall be executed concurrently with the execution and delivery of this Agreement.

2.5 Arrangements with U.S. Government. Schedule 2.5 contains mutually agreed provisions relating to issues, if any, relating to ways to address the provision of Communications Services to the U.S. Government.

### ARTICLE 3

#### GOVERNANCE

3.1 Shareholders of Thistle BV. Following the Closing Date, the parents shall, and in their capacity as direct and indirect shareholders and members of the Newco Group, shall, or shall cause their direct and indirect Subsidiaries and Affiliates that are shareholders or members of any or all of Thistle BV, Newco Services Company, DirectorCo and the Newco Subsidiaries to, and Thistle BV as a direct or indirect shareholder or member of the Newco Subsidiaries shall, vote their shares or member interests at any meeting of the shareholders or members, or class of shareholders or members, as the case may be, or in any written resolution executed in lieu of a meeting, and shall take all other actions necessary, to comply with and